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**Commissioner for
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Reference
PROBLEMGAMBLING-LETTER

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Gambling Inquiry
Productivity Commission
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Email: gambling@pc.gov.au

Dear *Staff for the Gambling Inquiry*

Re Productivity Commission Inquiry into Gambling - Submission - Commissioner for Victims' Rights

Thank you for the invitation to make a submission to the Productivity Commission's public inquiry into gambling, which I accept, thus this letter.

For the ease of your staff, I have confined this submission to dot points with brief explanations, focusing on the social impacts of problem gambling and highlighting consequences for victims of crime associated with that problem. I am available; however, to provide more information should that be required.

- **Problem gamblers may at times resort to crime to support their gambling addiction**

A number of studies conclude that some problem gamblers commit criminal offences to support their gambling (Wheeler, Round, Sarre & O'Neil, 2007, SA Centre for Economic Studies, 2005). The Productivity Commission (1999) reported that as many as 60-70% of problem gamblers may commit a gambling-related illegal offence. However, it is acknowledged that gambling-related crime is often undetected or unreported. Hence, it is extremely difficult to accurately quantify and attempts to do so are likely to underestimate the true extent of gambling-related crime.

Wheeler et al (2007, p.4) state that problem gamblers tend to commit income-generating crimes such as theft, fraud and robbery. As the Commissioner for Victims' Rights I am concerned with the implications for the victims of these crimes.

- **Often victims have no means to recover their loss**

If a crime is reported and an accused is found guilty, the victim has an opportunity to present a victim impact statement to the court prior to the sentencing of the offender. In the victim impact statement the victim can detail any financial loss and request that the judge or magistrate make an order for offender paid restitution/compensation. Before making an order the judge/magistrate will consider whether the offender has the capacity to pay restitution/compensation.

Given that problem-gamblers have had to resort to crime to support their gambling it is unlikely they will have the means to pay any form of compensation to the victim. This leaves victims feeling frustrated, even angry, particularly where the items were not insured or where victims are responsible for an insurance excess. For example, I have inquired into a case where the offender submitted that his or her crime resulted from a gambling addiction. The offender's fraudulent behaviour resulted in debts to victims of hundreds of thousands of dollars in addition to almost \$10,000 owed as victim levy payments on over a hundred convictions. The offender, who was imprisoned, will enter parole and ultimately unfettered freedom. His or her victims (as well as the State) will continue to live with the legacy of those crimes.

As a consequence victims often contact my office seeking state-funded victim compensation. The eligibility criteria for making a compensation claim for injuries sustained as a victim of crime is outlined under section 17 of the *Victims of Crime Act, 2001*. These claims do not cover property damage; indeed, property loss and damage have never been compensable under South Australia's state-funded victims' compensation.

Section 31 (2) of the *Victims of Crime Act 2001*, states that the Attorney-General has an absolute discretion to make other payments from the Victims of Crime Fund. The Attorney-General must be of the opinion that the payment will help the victim recover from the effects of a crime or advance his or her interests in other ways. This discretion is applicable in cases such as criminal trespass where a victim is frightened, but not necessarily attacked. In such circumstances, the victim might apply for financial assistance to install home security measures, if he or she can show these measures will help him or her feel safe and alleviate fear of further crime.

Although the Attorney-General has discretion to make payments to victims of crime, he is guided by the principles that underpin state-funded compensation, and by objects of the *Victims of Crime Act, 2001*. Consequently he has followed the principle that state-funded compensation does not cover property loss or damage.

- **The limitations of incarcerating problem gamblers**

Incarcerating problem gamblers who have engaged in illegal activities has potentially negative effects for both the offender and the victim/s. Incarcerating a problem gambler may limit his/her ability to make restitution, which, some suggest is "a critical part of successful gambling treatment" (Florida Council on Compulsive Gambling, Inc., 2005). Any response to gambling-related crime should attempt to optimise the offender's chance of rehabilitation and ameliorate the negative impact on victims.

- **Alternatives to incarceration - Therapeutic courts addressing underlying social causes.**

It has been suggested that offenders who commit gambling-related crime should be diverted away from the mainstream criminal-justice system to specialist therapeutic courts. Specialist courts, such as drug and alcohol courts, have operated in most Australian jurisdictions for a number of years.

Mirroring therapeutic courts devoted to drugs and spousal abuse, Judge Farrell established the first gambling court in America. According to Marvin Steinberg, PhD (quoted in Hanlon, Feb, 2008), Farrell's gambling court has a low recidivism rate proving the effectiveness of his model that includes "monitoring, restitution, individualized treatment approaches and personal encouragement".

My primary reservation, however, about therapeutic courts arises because few of those courts provide for active victim-participation. The Family Violence Court, for instance, is connected to victim and offender assistance services. Conversely, the Mental Impairment Court has no integrated victim assistance; instead, victims are often expected to put their lives on hold while the focus is on treating offenders. Should the therapeutic court concept be adapted to deal with cases involving problem gamblers, the law, policy and practice of such a court must, in my view, be founded on objects such as —

- Respect for the dignity and equality of victims and offenders
- Operate as a viable alternative that is used in conjunction with ordinary criminal justice processes
- Involve problem-solving that addresses the underlying causes of the offenders' crimes and addresses the harm done and victims' needs
- Encourage offenders to gain insight into the causes and harm, as well as to take responsibility
- Recognises the role of significant others - in some circumstances the community - in preventing and responding to problem gamblers who commit crime but also problem gambling as a broad social problem

Victims must have a right to be consulted before key decisions are made. In some cases, this could require that victims have legal representation. Victims should have access to justice and fair treatment. Thus, any court or other process should be expeditious, inexpensive, fair and accessible. It should also be responsive to victims' needs, including — giving a fair hearing, allowing views and concerns to be presented, provide proper assistance, minimise inconvenience, protect privacy (or at least avoid unnecessary intrusion into victim privacy), and provide for victim challenges of prosecutorial decisions that do not have due regard for victims' needs.

- **Gamblers' families are victims of crime**

Gamblers' families are often over-looked as victims of crime. They can be direct victims, such as when a problem gambler who is also a carer commits financial abuse (eg theft of money) on an elder. They can be indirect victims, such as happens when furniture and other goods are repossessed or financial institutions fore-close on mortgages. They can also be victims of retribution by angry victims of offenders' crimes.

Children of problem gamblers imprisoned for their crimes could find themselves being dragged to and from prison. They could find themselves destitute because of the debts of their offending parents.

As Commissioner for Victims' Rights, I hasten to point out that I rarely deal with this class of victim but they are among the faces of those harmed by problem gambling, so they should not be forgotten nor ignored.

Yours sincerely

A handwritten signature in cursive script that reads "Michael O'Connell". The signature is written in black ink on a white background.

Michael O'Connell
Commissioner for Victims' Rights

References:

Florida Council on Compulsive Gambling, Inc., May 2005, *Problem Gambling and Crime: Impacts and Solutions A Proceedings Report on the National Think Tank*, accessed online 3/2/09, available at http://gamblinghelp.org/media/.download_gallery/Think%20Tank%20on%20Gambling%20and%20Crime.pdf

Hanlon, P, February 2008, *Conn. group advocates for gambling court*, accessed online 3/2/09, available at http://www.nepsy.com/leading/0802_ne_CT%20gambling.html

The SA Centre for Economic Studies, December 2005, *Community Impacts of Electronic Gaming Machine Gambling (Part A)*, Victorian Government.

Wheeler S., Round D., Sarre R. and O'Neil M. (2008) "The Influence of Gaming Expenditure on Crime Rates in South Australia: A Local Area Empirical Investigation", *Journal of Gambling Studies*, Vol. 24 pp. 1-24.